

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT EARL JOHNSON,

Plaintiff - Appellant,

v.

HAROLD CLARK, DOC Secretary; et al.,

Defendants - Appellees.

No. 07-35597

D.C. No. CV-05-05401-FDB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Franklin D. Burgess, District Judge, Presiding

Submitted April 13, 2009<sup>\*\*</sup>

Before: GRABER, GOULD, and BEA, Circuit Judges.

Washington state prisoner Robert Earl Johnson appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging prison

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

officials violated his equal protection rights by denying him extended family visitation with his wife based on racial discrimination. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Beene v. Terhune*, 380 F.3d 1149, 1150 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Johnson’s equal protection claim because he failed to raise a triable issue as to whether defendants “acted with an intent or purpose to discriminate against [him] based upon membership in a protected class.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005). Further, Johnson failed to raise a triable issue as to whether he was similarly situated to European-American inmates who received extended family visits. *See id.* at 1168 (“Different treatment of unlike groups does not support an equal protection claim.”).

Johnson’s remaining contentions are unpersuasive.

**AFFIRMED.**